

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: ORANGE MALL Rezone from C-2 (Commercial) to PCD (Planned Commercial Development). (Orange Mall Partners LLC/ Land Design Innovations, Inc. Constance Owens, applicant)

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Tony Walter **EXT.** 7375

Agenda Date 12/9/03 **Regular** ☐ **Consent** ☐ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☒

MOTION/RECOMMENDATION:

1. Enact an ordinance to APPROVE the proposed rezoning from C-2 (Commercial) to PCD (Planned Commercial Development District) on approximately 12.9 acres located in the Fern Park Shopping Center abutting US 17-92 south of Fernwood Boulevard with staff findings and recommendations and authorize the Chairman to execute the attached development order; or
2. DENY the proposed rezoning from C-2 (Commercial) to PCD (Planned Commercial Development District) on approximately 12.9 acres located in the Fern Park Shopping Center abutting US 17-92 south of Fernwood Boulevard; or
3. CONTINUE this item to a date and time certain.

District 4 – Henley

Tony Walter, Assistant Planning Manager

BACKGROUND:

The applicant is requesting approval of a rezoning from C-2 (Commercial) to PCD (Planned Commercial Development District) on approximately 12.9 acres at the Fern Park Shopping Center abutting US 17-92 south of Fernwood Boulevard. The applicant is proposing to convert the vacant structure to an indoor flea market/ shopping center with a minimum of 330 booths.

The applicant states that vendors will be allowed to sell new or antique goods only, with lease options at a minimum of one (1) year, along with a percentage of seasonal vendors with a lease option of less than one year. The applicant also has stated the intent to improve the current site conditions by removal and replacement of existing parking lot pavement that is unsuitable for proposed traffic conditions, to provide open space, some treatment

Reviewed by:
Co Atty: KZC
DFS: _____
Other: WW
DCM: SS
CM: PO
File No. ph700pdp04

of stormwater runoff and landscape and irrigation to enhance the "curb-appeal" as illustrated on the attached site plan.

At the November 5, 2003 Planning and Zoning Commission meeting the applicant agreed to provide a minimum of 25% open space. To achieve the open space requirement the applicant is asking that approximately 38% of the parking spaces be reduced from the standard 10 X 20 feet to 9 X 18 feet. Also the plan does not recognize the parking required for the computer store occupying the south part of the build and does not acknowledge an apparent cross parking agreement with the credit union to the north.

Because of the potential high turnover in parking and that the stated purpose of granting a deviation from the parking space size is to protect and encourage the preservation of large canopy, specimen or historic trees or to increase open space over and above what is required in high recharge areas, the smaller parking spaces should not be allowed. The anticipated number of booths will be reduced from 335 to approximately 275 when the larger parking space size, required parking for the computer store and cross parking commitments are taken into consideration.

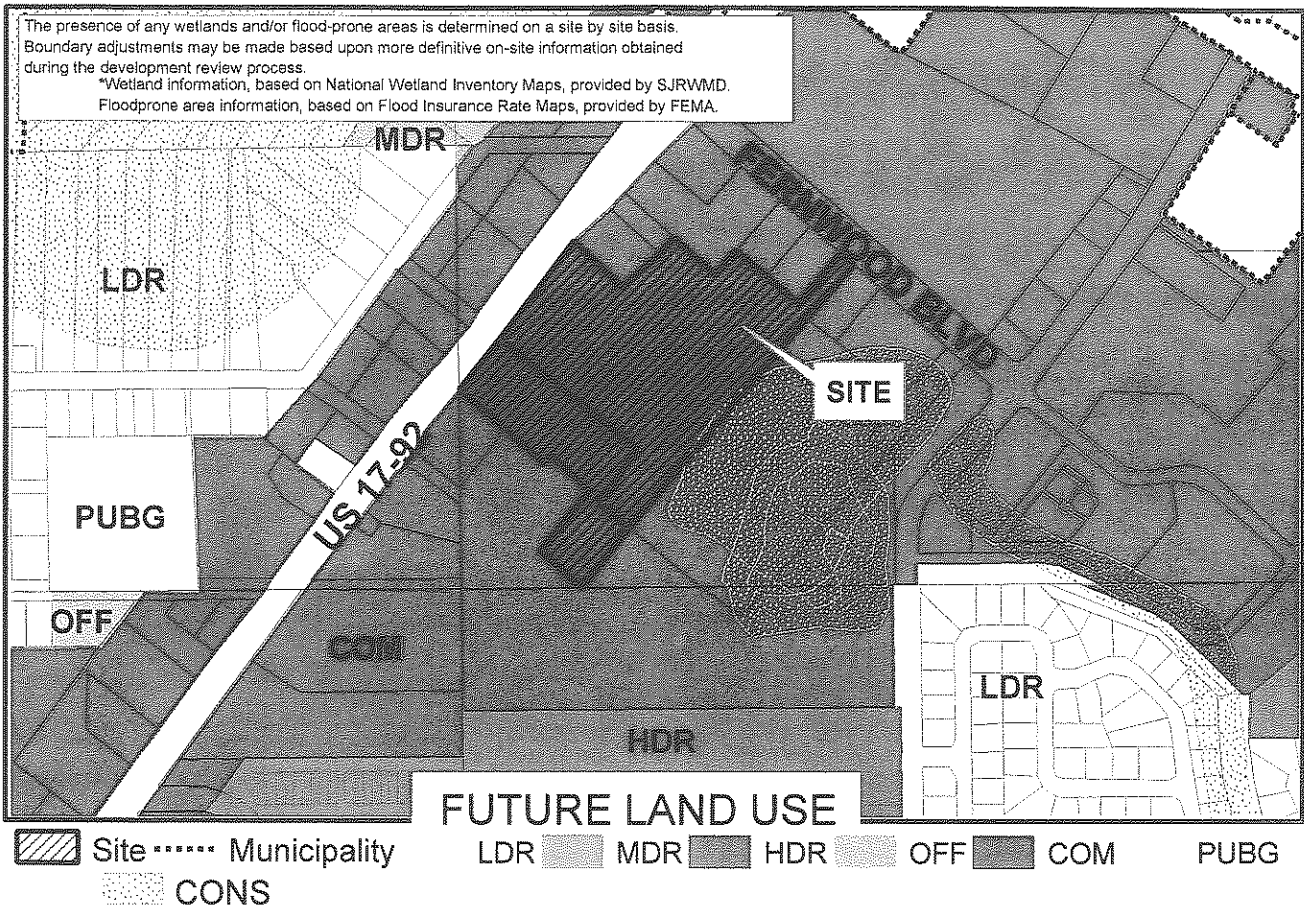
LPA/P&Z RECOMMENDATION:

On November 5, 2003, the Planning & Zoning Commission voted 6-0 to recommend APPROVAL of the request subject to the conditions in the staff recommendation.

STAFF RECOMMENDATION:

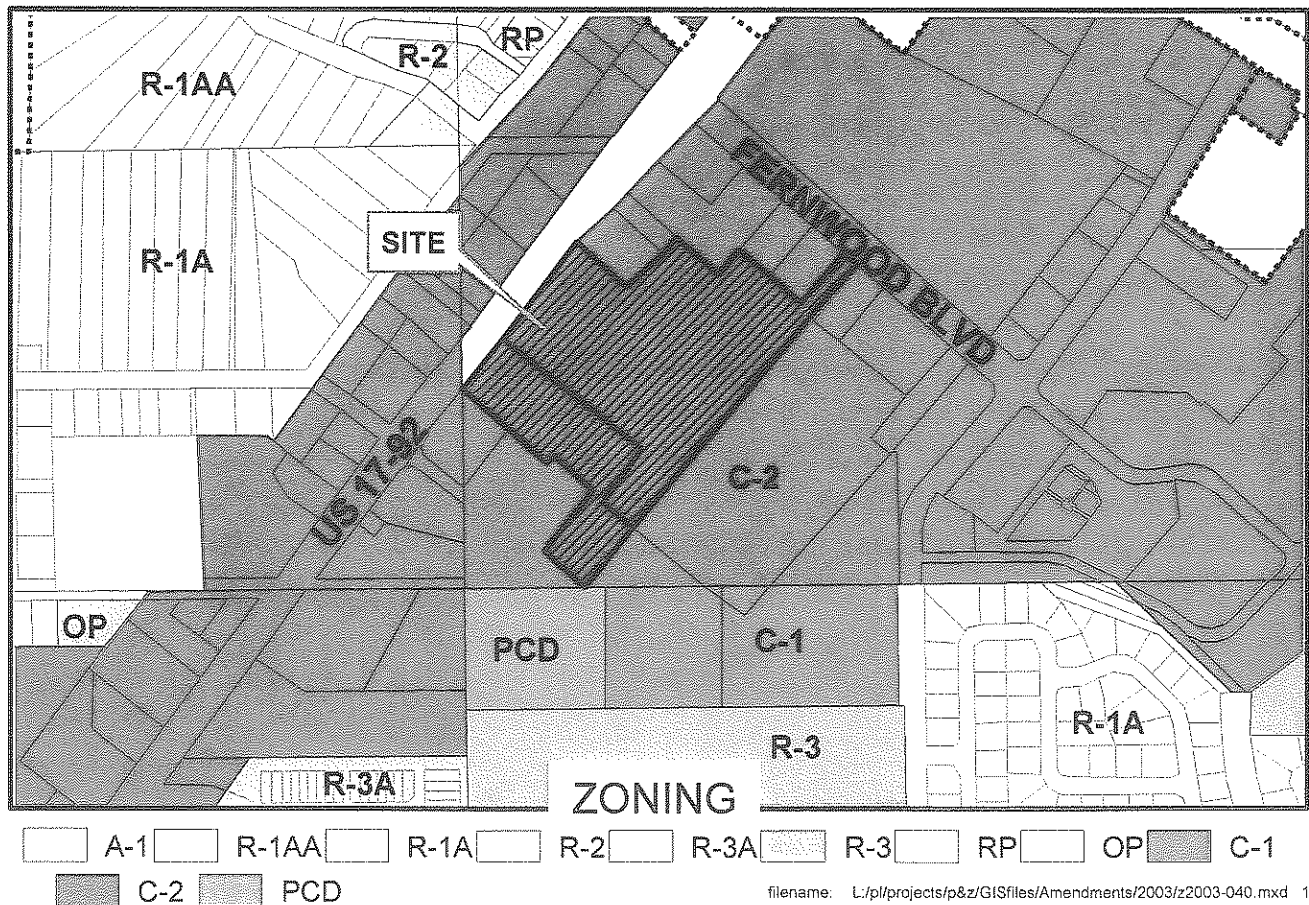
Staff recommends approval of the proposed rezoning from C-2 (Commercial) to PCD (Planned Commercial Development District) on approximately 12.9 acres located in the Fern Park Shopping Center abutting US 17-92 south of Fernwood Boulevard with staff findings and recommendations.

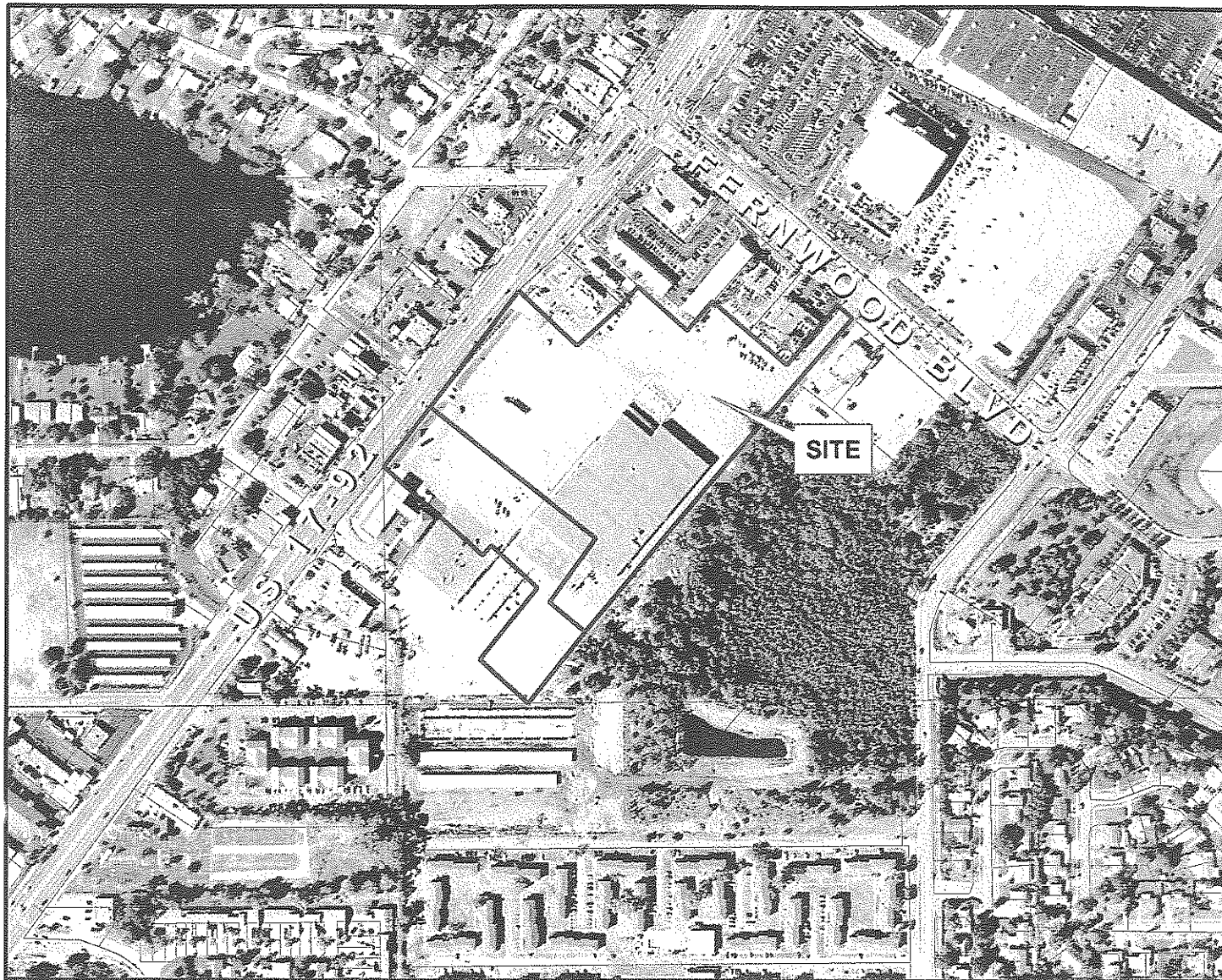
Attachments: Future Land Use and Zoning Map
Vicinity Aerial
Site Plan
Orange Mall Rezone Executive Summary
Orange Mall Staff Analysis
P&Z November 5, 2003 Meeting Minutes
Draft Zoning Ordinance
Draft Development Order





Applicant: Orange Mall Partners LLC
 Physical STR: 17-21-30-510-0000-004G & 300-0220-0000
 Gross Acres: 12.86 BCC District: 4
 Existing Use: Retail/Vacant
 Special Notes: None

	Amend/ Rezone#	From	To
FLU	--	--	--
Zoning	Z2003-040	C-2	PCD





Rezone No: Z2003-040
 From: C-2 To: PCD

 Parcel
 Subject Property



February 1999 Color Aerials

EXECUTIVE SUMMARY

ORANGE MALL REZONE

C-2 (Commercial) to PCD (Planned Commercial Development District)		Rezoning Z2003-040
<i>REQUEST</i>		
APPLICANT	Constance A. Owners, P.E., Land Design Innovations, Inc.	
PROPERTY OWNER(S)	R D Management Corporation, Charles J. Messi, Vice President	
PLAN AMENDMENT	None	
REZONING	Rezone from C-2 (Commercial) to PCD (Planned Commercial Development District)	
LOCATION	In the Fern Park Shopping Center abutting US 17-92 south of Fernwood Blvd. (old site)	
PROPOSED USE	To convert the vacant structure to an indoor flea market/shopping center, which will include a proposed minimum of 330 booths. Vendors will be allowed to sell new or antique goods only, with lease options at a minimum of one (1) year, along with a percent of seasonal vendors with a lease option of less than one year	
APPROXIMATE SIZE	12.9 Acres (Commercial/C-2)	
EXISTING USE	Unoccupied Commercial/Retail	
HEARING DATE(S)	LPA/P&Z: November 5, 2003	BCC: December 9, 2003
SEC/TWP/RNG	17-21-30-510-0000-004G & 17-21-30-300-0220-0000	
FILE NUMBER	03-20500009; Z2003-040	
COMMISSION DISTRICT	#4 – Henley	

RECOMMENDATION

**Planning and Zoning Commission
Recommendation
November 5, 2003**

On November 5, 2003, the Planning & Zoning Commission voted 6-0 to recommend APPROVAL of the request subject to the conditions in the staff recommendation.

**STAFF Recommendation
December 9, 2003**

Staff recommends approval of the proposed rezoning from C-2 (Commercial) to PCD (Planned Commercial Development District) on approximately 12.9 acres located in the Fern Park Shopping Center abutting US 17-92 south of Fernwood Boulevard with staff findings and recommendations.

1. That at least seventy five percent (75%) of the booths be limited to tenant leases of one (1) year or longer. That the balance of the booths be limited to seasonal leases. That weekend rentals be prohibited.
2. That the vendors will sell only bona fide antiques and/or new merchandise.
3. That all parking spaces will be 10 X 20 feet or meet the handicap accessible standards at final master plan.
4. That the total numbers of booths not exceed that number supported by parking facilities at a ratio of 2.0 parking spaces per booth or 1 parking space per 250 square feet of general retail as designated on the final master plan.
5. That the applicant demonstrate that the cross parking agreement with the credit union can be terminated or that these spaces are accounted for at final master plan.
6. That paint shops, auto care, pawn shops, tattoo and body piercing establishments and gaming establishments not be permitted.
7. Provide an internal pedestrian sidewalk system connecting the front entrance of the building to US 17-92 and Fernwood Boulevard.
8. Provide a minimum of twenty five percent

	<p>(25%) open space.</p> <p>9. That the parking lot lighting not exceed a height of sixteen (16) feet.</p> <p>10. That the building exterior and color be consistent with the building elevation presented at the December 9, 2003 Board of County Commissioners meeting.</p> <p>11. That a one hundred foot (100') curb and gutter be constructed in front of both bus stops and shelters on Fernwood Boulevard and a curb be installed along the east boundary abutting the fast food restaurant.</p> <p>12. If warranted at final master plan, that a left turn lane into the site be constructed on Fernwood Boulevard.</p> <p>13. That the operating hours will be from 9:00 AM to 9:00 PM.</p> <p>14. That all uses permitted in the C-2 zoning district, except those listed in item 6 above, as well as indoor flea markets are permitted.</p> <p>15. That security be provided in the parking lot and inside the building during operating hours.</p> <p>16. That the fenced garden area be used for plant sales only.</p>
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ORANGE MALL REZONE STAFF ANALYSIS

C-2 (Commercial) to PCD (Planned Commercial Development District)

**Rezoning
Z2003-040**

1. **Property Owner(s):** R D Management Corporation, Charles J. Messi, V P
2. **Tax Parcel Number(s):** 17-21-30-510-0000-004G and 17-21-30-300-0220-0000
3. **Applicant's Statement:** The applicant has stated that this request is to allow the applicant to convert the vacant structure to an indoor flea market/shopping center, which will include a proposed minimum of 330 booths. Vendors will be allowed to sell new or antique goods only, with lease options at a minimum of one (1) year, along with a percent of seasonal vendors with a lease option of less than one year. The applicant also has stated the intent to improve the current site conditions, while attempting to provide some stormwater treatment to the site that currently has none. The proposed construction will include removal and replacement of existing pavement that has become unsuitable for proposed traffic conditions, providing an asphalt overlay to the entire applicant-owned parking lot, re-striping of parking spaces, removal of impervious areas in order to provide green-space and some treatment of stormwater runoff, and proposed landscape and irrigation to enhance "curb-appeal" to a site that has not been occupied for several years.
4. **Development Trends:** Development trends.

SITE DESCRIPTION

1. PERMITTED USES - The Commercial future land use designation and PCD (Planned Commercial Development District) zoning classification provides for a variety of land use densities and intensities with final approval of uses by the Board of County Commissioners.

Abutting uses, future land use designations and zoning classifications are:

Location	Existing Use	Future Land Use	Zoning
Site	Commercial/ Retail	Commercial	C-2
North	Commercial/ Retail	Commercial	C-2
South	Commercial/ Self Storage	Commercial	C-1 & PCD

East	Wetlands/ Vacant	Commercial	C-2
West	Commercial/ Retail	Commercial	C-2

Adjacent Uses: The abutting property located on the north side of the site consists of retail establishments including a bank and post office. The property to the east is primarily vacant and wetlands. The properties to the south and west are commercial including a gasoline station and self storage facility.

Project Description: The proposed rezone is to allow the applicant to convert the vacant structure to an in-door flea market/shopping center, which will include a proposed minimum of 330 booths. The proposed flea market will occupy approximately 91,000 square feet of the vacant K-Mart facility. Vendors will be allowed to sell new or antique goods only, with lease options at a minimum of one (1) year, along with a percent of seasonal vendors with a lease option of less than one year. The applicant also proposes to improve the current site conditions, while attempting to provide some stormwater treatment to the site that currently has none. The proposed site improvements will include removal and replacement of existing pavement that has become unsuitable for proposed traffic conditions, providing an asphalt overlay to the entire applicant-owned parking lot, re-striping of parking spaces, removal of impervious areas in order to provide green-space and some treatment of stormwater runoff, and landscaping and irrigation to provide "curb-appeal" to a site that has not been occupied for several years.

ANALYSIS

2. PLAN PROGRAMS - Since the Plan (Vision 2020) policies address the continuance, expansion and initiation of new government service and facility programs, including, but not limited to, capital facility construction, each application for a land use designation amendment will include a description and evaluation of any Plan programs (such as the affect on the timing/financing of these programs) that will be affected by the amendment if approved.

Summary of Program Impacts: The proposed PCD rezoning does not alter the options or long-range strategies for facility improvements or capacity additions included in the Support Documentation to the Seminole County Comprehensive Plan (Vision 2020). The rezone request would not be in conflict with the Metroplan Orlando Plan or the Florida Department of Transportation's 5-Year Plan (Policy TRA 14.1).

A. Traffic Circulation - Consistency with Future Land Use and Design Elements: *In terms of all development proposals, the County shall impose a linkage between the Future Land Use Element and the Traffic Circulation Element and all land development activities shall be consistent with the adopted Future Land Use and Design Elements (Policy TRA 2.1). The County shall require that access to properties fronting on more than one roadway shall be designed to minimize impact to adjacent residential areas. Access should be permitted on adjacent collector or arterial roadways and not on the adjacent local or residential streets. However, where improved traffic control can be achieved with*

minimum impact to adjacent residential neighborhoods, access may be considered on a local or residential street (Policy TRA 10.10).

The site is served by US 17-92 and Fernwood Blvd. Based on the County 2003 Travel Time and Delay Study, the section of US 17-92 from Lake of the Woods to SR 436 operates at Level of Service (LOS) standard "E" in the AM peak period and LOS "F" in the PM peak period. Design of improvements to US 17-92 is scheduled to begin in 2004 with construction to follow.

The County does not track Fernwood Blvd. as part of the Concurrency Management System. The 2003 daily count for Fernwood Blvd. is 10,918 vehicles. Based on the County's LOS standards for daily capacities in the Comprehensive Plan, Fernwood is operating at LOS A. No improvements are scheduled for Fernwood Blvd.

The applicant's preliminary traffic study indicates the proposed redevelopment is expected to generate 152 net new AM peak hour trips and 304 net new PM peak hour trips. Because the facility for the proposed use has an existing vacant building development can precede generating impacts to the roadway up to what the previous use generated.

Engineering has reviewed the traffic impacts and finds that there will not be an increase in traffic from the previously approved K-Mart.

B. Intermodal Connections in Transportation Improvements: The County shall consider the safety and efficiency of features at intermodal connections, such as bus stops, bus shelters, signage, pedestrian and bicycle/trail access, handicapped access and park-and-ride lots.

The applicant's traffic study states that pedestrian trips are highly expected because of the mix of retail and service activities in the vicinity of the site within walking distance (usually 0.25 miles). Also site observations indicate a high level of pedestrians at the bus stops along Fernwood Blvd. The pedestrian activity is expected to increase after the Orange Mall redevelopment is in place.

The site is served by two regional transit routes at stops along the Fernwood Blvd. corridor. Links 39 and 41 each operate at 30-minute frequencies. Potential customers and employees of the facility may choose to access the site as pedestrians or using public transportation thus reducing vehicle trips and parking demand.

C. Water and Sewer Service - Extension of Service to New Development: Future Land Use Element Exhibit 20 (Services and Facilities by Classification) requires a full range of urban services to serve the proposed uses (Policy POT 4.5 and Policy SAN 4.4).

The site is within the Seminole County utilities service area and is currently being served by the County's central water and sewer service system.

D. Public Safety – Adopted Level of Service: *The County shall maintain adopted levels of service for fire protection and rescue...as an average response time of five minutes (Policy PUB 2.1).*

The property is served by Seminole County Fire Station #22 at 7122 US 17-92, Fern Park, Florida. Response time to this site would not exceed the County's average response time standard of five (5) minutes.

3. REGULATIONS - The policies of the Plan also contain general regulatory guidelines and requirements for managing growth and protecting the environment. These guidelines will be used to evaluate the overall consistency of the land use amendment with the Comprehensive Plan (Vision 2020).

A. Preliminary Development Orders: Capacity Determination: *For preliminary development orders and for final development orders under which no development activity impacting public facilities may ensue, the capacity of Category I and Category III public facilities shall be determined as follows... No rights to obtain final development orders under which development activity impacting public facilities may ensue, or to obtain development permits, nor any other rights to develop the subject property shall be deemed to have been granted or implied by the County's approval of the development order without a determination having previously been made that the capacity of public facilities will be available in accordance with law (Policy IMP 2.4).*

A review of the availability of public facilities to serve the project indicates that there would be adequate capacity to serve the site, and that the proposed rezoning would create no adverse impacts to County public facilities.

B. Flood Plain and Wetlands Areas - Flood Plain Protection and Wetlands Protection: *The County shall implement the Conservation land use designation through the regulation of development consistent with the Flood Prone (FP-1) and Wetlands (W-1) Overlay Zoning classifications...(FLU Policy 1.2 and 1.3).*

There are flood prone areas on the property and wetlands identified on the adjacent property. The site can be developed with code compliance.

Stormwater retention design, to be approved at time of PCD final site plan, may result in reduced development activities for this property.

C. Protection of Endangered and Threatened Wildlife: *The County shall continue to require, as part of the Development Review Process, that prior to development approval, proposed development to coordinate with all appropriate agencies and comply with the US Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission Rules as well as other applicable Federal and State Laws regarding protection of endangered and threatened wildlife (Policy CON 3.13).*

Prior to submission of a final PCD site plan a survey of threatened and endangered and species of special concern will be required to determine the presence of any endangered or threatened wildlife.

4. DEVELOPMENT POLICIES - Additional criteria and standards are also included in the Plan (Vision 2020) that describes when, where and how development is to occur. Plan development policies will be used to evaluate the appropriateness of the use, intensity, location, and timing of the proposed amendment.

A. Compatibility: *When the County's Future Land Use Map (FLUM) was developed, land use compatibility issues were evaluated and ultimately defined through a community meeting/hearing process that involved substantial public comment and input. When amendments are proposed to the FLUM, however, staff makes an initial evaluation of compatibility, prior to public input and comment, based upon a set of professional standards that include, but are not limited to criteria such as: (a) long standing community development patterns; (b) previous policy direction from the Board of County Commissioners; (c) other planning principles articulated in the Seminole County Comprehensive Plan (Vision 2020) (e.g., appropriate transitioning of land uses, protection of neighborhoods, protection of the environment, protection of private property rights, and no creation of new strip commercial developments through Plan amendments, etc.).*

Based upon an evaluation of compatibility, rezoning the property to PCD, as proposed, would be consistent with Plan policies identified at this time and therefore is consistent with the Seminole County Comprehensive Plan (Vision 2020).

Compatibility with surrounding uses can be achieved by applying the conditions set forth in the enclosed rezoning development order that addresses location criteria, size, design, access, buffering, lighting, and hours of operation, consistent with the following:

1. The County shall consider uses or structures proposed within the Planned Unit Development (PUD) and Planned Commercial Development (PCD) zoning classifications on a case by case basis evaluating the compatibility of the proposed use or structure with surrounding neighborhoods and uses. Compatibility may be achieved by application of development standards such as, but not limited to, lot size, setbacks, buffering, landscaping, hours of operation, lighting, and building heights. The Board of County Commissioners shall have discretion as to the uses and structures approved with a PUD or PCD zoning classification (Policy FLU 2.11).
2. The County shall continue to support the US Highway 17-92 Corridor Redevelopment Agency to maintain the existing corridor assets, to discover and promote its hidden assets, and to improve or eliminate deficiencies in the target redevelopment area. (Policy FLU 4.3)
3. The Comprehensive Plan sets forth the long range potential uses of property in the context of a lawful planning horizon and provides for a wide array of potential zoning classifications within each land use designation. A property owner is not entitled to all zoning classifications or the most potentially dense or intense zoning classification

within a land use designation. Numerous planning, timing, compatibility, public facility and other generally acceptable planning issues affect the appropriateness of assigning a particular zoning classification or approving a particular land use with regard to a particular parcel of property. (Policy FLU 12.4)

Applicable Plan policies include, but are not limited to, the following:

1. Policy FLU 2.11 (Determination of Compatibility in the Planned Unit Development and Planned Commercial Development Zoning Classifications).
2. Policy FLU 4.3 (Community Redevelopment Agency).
3. Policy FLU 12.4 (Relationship of Land Use to Zoning Classification).
4. FLU Exhibit 5 (Future Land Use Densities and Allowable Zoning Classifications).

B. Concurrency Review - Application to New Development: *For purposes of approving new development subsequent to adoption of this Comprehensive Plan, all adopted public safety level of service standards and schedules of capital improvements...shall be applied and evaluated...consistent with policies of the Implementation Element...* (Policy CIE 3.2).

This policy provides for the adoption of level of service (LOS) standards for public facilities and requires that final development orders be issued only if public facilities meeting the adopted LOS are available or will be available concurrent with the development. The applicant has filed a Concurrency Review Deferral Affidavit.

5. COORDINATION - Each application for a land use designation amendment will be evaluated to assess how and to what extent any additional intergovernmental coordination activities should be addressed.

A. Plan Coordination: *The County shall continue to coordinate its comprehensive planning activities with the plans and programs of the School Board, major utilities, quasi-public agencies and other local governments providing services but not having regulatory authority over the use of land (Policy IGC 2.9). Seminole County shall coordinate its comprehensive planning activities with the plans and programs of regional, State and Federal agencies by...as the County is now a charter County (Policy IGC 3.3).*

The Seminole County Comprehensive Plan (Vision 2020) fully complies with the State Comprehensive Plan adopted pursuant to Chapter 187, Florida Statutes, and the Strategic Regional Policy Plan of the East Central Florida Regional Planning Council pursuant to Chapter 163, Florida Statutes. Consistency with the State Plan and the Regional Policy Plan may be evaluated by individual review agencies during the Plan amendment review process.

STAFF RECOMMENDATION

FINDINGS:

Staff has made the following findings for this proposal.

1. Rezoning the property to Planned Commercial Development is consistent with the Comprehensive Plan and compatible with the surrounding land use.
2. The plan submitted by the applicant meets the 25% minimum open space required in Sec. 30.468(d) of the Seminole County Land Development Code.
3. To achieve the open space requirement the applicant is asking that approximately 38% of the parking spaces be reduced from the standard 10 X 20 feet to 9 X 18 feet. Also the plan does not recognize the parking required for the computer store occupying the south part of the building and does not acknowledge an apparent cross access agreement with the credit union to the north. Because of the potential high turnover in parking and that the stated purpose of granting a deviation from the parking space size is to protect and encourage the preservation of large canopy, specimen or historic trees or to increase open space over and above what is required in high recharge areas, the smaller parking spaces should not be allowed. The anticipated number of booths will be reduced from 335 to approximately 275 when the larger parking space size, required parking for the computer store and cross parking commitments are taken into consideration.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed rezoning from C-2 (Commercial) to PCD (Planned Commercial Development District) on approximately 12.9 acres located in the Fern Park Shopping Center abutting US 17-92 south of Fernwood Boulevard with staff findings and recommendations.

DEVELOPMENT CONDITIONS:

1. That at least seventy five percent (75%) of the booths be limited to tenant leases of one (1) year or longer. That the balance of the booths be limited to seasonal leases. That weekend rentals be prohibited.
2. That the vendors will sell only bona fide antiques and/or new merchandise.
3. That all parking spaces will be 10 X 20 feet or meet the handicap accessible standards at final master plan.
4. That the total numbers of booths not exceed that number supported by parking facilities at a ratio of 2.0 parking spaces per booth or 1 parking space per 250 square feet of general retail as designated on the final master plan.

5. That the applicant demonstrate that the cross parking agreement with the credit union can be terminated or that these spaces are accounted for at final master plan.
6. That paint shops, auto care, pawn shops, tattoo and body piercing establishments and gaming establishments not be permitted.
7. Provide an internal pedestrian sidewalk system connecting the front entrance of the building to US 17-92 and Fernwood Boulevard.
8. Provide a minimum of twenty five percent (25%) open space.
9. That the parking lot lighting not exceed a height of sixteen (16) feet.
10. That the building exterior and color be consistent with the building elevation presented at the December 9, 2003 Board of County Commissioners meeting.
11. That a one hundred foot (100') curb and gutter be constructed in front of both bus stops and shelters on Fernwood Boulevard and a curb be installed along the east boundary abutting the fast food restaurant.
12. If warranted at final site plan, that a left turn lane into the site be constructed on Fernwood Boulevard.
13. That the operating hours will be from 9:00 AM to 9:00 PM.
14. That all uses permitted in the C-2 zoning district, except those listed in item 6 above, as well as indoor flea markets are permitted.
15. That security be provided in the parking lot and inside the building during operating hours.
16. That the fenced garden area be used for plant sales only.

Note: As this is a preliminary plan, additional conditions may be placed on the PCD site plan during the final site plan review process.

**MINUTES OF THE SEMINOLE COUNTY
LAND PLANNING AGENCY/
PLANNING AND ZONING COMMISSION
WEDNESDAY, NOVEMBER 5, 2003**

Members present: Thomas Mahoney, Alan Peltz, Dick Harris, Chris Dorworth, Dudley Bates, and Ben Tucker.

Members absent: Beth Hattaway

Also present: Matt West, Planning Manager; Tony Walter, Assistant Planning Manager; Michael Rumer, Planner; Tina Deater, Senior Planner; Denny Gibbs, Planner; Karen Consalo, Deputy County Attorney; Jim Potter, Senior Engineer; and Candace Lindlaw-Hudson, Senior Staff Assistant.

D. Orange Mall; Orange Mall Partners LLC/Constance Owens, applicant; approximately 12.9 acres; rezone from C-2 (Commercial) to PCD (Planned Commercial Development); located in the Fern Park Shopping Center abutting US 17-92, south of Fernwood Boulevard. (Z2003-040)

Commissioner Henley - District 4
Tony Walter, Principal Planner

Tony Walter presented the background information from his staff report. The site is a former K-Mart store, which will be converted to an indoor flea market and antique mall. Commercial zoning surrounds the store. Areas of staff concern for this project included the deficiency in open space requirements that called for 25 % open space. This project has allotted 21.07% for open space. In addition, parking requirements call for 3 spaces per booth. The applicant has allotted 2 parking spaces per booth. The traffic will not increase beyond what the K-Mart would generate. Mr. Walter stated that staff could not recommend approval due to insufficiency of parking and open space.

Commissioner Tucker asked Mr. Walter if the K-Mart were to come back, would he recommend approval.

Mr. Walter said he would.

Commissioner Harris stated that the Board is looking at a redevelopment. This requires a change to PCD. He asked what was to be gained by denying this request based on a parcel that is insufficient anyway.

Mr. Walter stated that the open space is being improved, but is still insufficient.

Commissioner Harris asked if Mr. Walter would recommend approval if he could.

Mr. Walter said that he would if the Code allowed it.

Commissioner Bates asked what about the basis for the 25% open space requirement.

Mr. Walter stated that PCDs are intense uses. The Code requires additional open space to preserve the quality of life nearby.

Matt West stated that in December Seminole County adopted the "fast track" ordinance that requires 25% open space. The only way to add open space is to increase a grass area. If you want to rezone to PCD you must meet all criteria.

Commissioner Tucker asked if the old garden center area was included in the open space.

Mr. Walter said it was not counted as open space.

Commissioner Bates asked for a review of how the parking requirements were calculated.

Mr. Walter stated that parking calculation for flea markets provide 1 space per booth. Flea World has 2 to 2.35 spaces per booth. Mr. Walter said that research agreed with the Flea World ratio of 2.25 parking spaces per booth.

Commissioner Tucker pointed out that Flea World includes entertainment elements.

Tommy Boroughs, Esq., spoke on behalf of the applicant. He stated that the property has been vacant since 1995. This will be like a mini-mall, completely enclosed. It will operate 7 days per week. He agrees to rent to tenants who will sell only new merchandise or bona fide antiques.

The two areas of disagreement include parking criteria and open space requirements. 682 spaces are proposed for the maximum of 341 stalls. The applicant is proposing 316 more spaces than would be required for normal retail commercial development of the site. Proposed is 2 spaces per stall. A study of area flea market parking areas averaged at 2. Flea World has 2.35 spaces, but it is different from this operation.

Open space requirements focus on two issues. This building is already developed. We are coming to within 4 percent of what is required. That is very good for what is proposed. Section 30.461 was quoted stating that flexible interpretations were allowed. If this were in "conventional commercial zoning" a 25 % ratio will be required. This is not conventional zoning.

Karen Consalo quoted the open space requirement that is inflexible in PCD zoning.

Commissioner Tucker asked what the 25 % was taken from.

Mr. Boroughs said that it was 25% of the gross site.

The other problem was operating hours. The applicant would like to remain open during holiday shopping time until 9:00 P.M.

Mr. Boroughs asked to see the language in the Code that said that the open space requirement of 25% cannot be waived. He summarized by saying that the applicant is looking for the best use of the site. It will improve the parking lot, lighting and general appearance of the site. It will be a win-win for everyone. It will be a small business opportunity and employment opportunity. Traffic will not be worse. Security will be better. There is a large strip of C-2 zoning between this site and any nearby residential zoning.

Commissioner Bates asked how many spaces were there now.

Mr. Boroughs said less than for this project. 366 are required for the old use.

Commissioner Tucker asked what the K-Mart hours of operation were.

Mr. Boroughs said that the K-Mart was open from 9:00 A.M. to 9:30 P.M.

Commissioner Tucker asked if the exit onto Fernwood is part of the PCD.

Mr. Boroughs said that it was.

Commissioner Tucker asked if there were any left turns allowed onto Highway 17-92 between the Raceway and the auto parts store.

Mr. Boroughs said there were not.

Commissioner Tucker asked how retail sales would be conducted.

Charles Masai, an agent for the owner and property manager, stated that each booth will make a record separately, and report monthly.

Karen Consalo stated that the Board of County Commissioners has final authority over interpretation of the Code. This may help with deliberation of the Board.

Mr. West stated that other factors such as parking ratios and setbacks are negotiable. It is not a good trend to start deviating from the 25% requirement.

Commissioner Harris asked if there was anything written in the Code pertaining to redeveloping rather than new development.

Mr. West stated that we must shift the focus of the Code to infill and redevelopment.

Commissioner Mahoney stated that the Code cannot be written to pertain to every instance. Sometimes it must be interpreted.

John Wall said that he owns "Best Used Books" nearby the site. He is looking forward to the redevelopment. His customers were excited to hear about this project. Local businesses will benefit from this. He would like to see an internal driveway hook up to other businesses through a main entrance that would link to the adjacent commercial development.

Stan Besmer from English Estates in Fern Park stated that he was opposed. He is trying to upgrade Fern Park. A flea market was proposed last November. He called Code Enforcement when spaces were being rented without a zoning change. This is not a best use of this area. Public opinion of people in the area is against this. 4 area home owners associations are opposed. The old Red Barn flea market was closed.

Mr. Boroughs stated that the owner is now handling the property. The incident Mr. Besmer was referring to pertained to someone else who was renting the building before. Mr. Boroughs requested a short break to confer with staff.

The meeting was recessed for a short break at this time.

After reconvening, Mr. Walter stated that staff believes that the applicant can meet the criteria if the parking is reduced to 2, the 25% open space requirement can be met. Hours of operation 9 – 9:30 during holiday hours are all right.

Commissioner Peltz asked why the hours should be restricted at all.

Commissioner Mahoney agreed. Why should the hours be later only during holidays?

Mr. Walter stated that staff would not object to that.

The public hearing was now closed.

Commissioner Mahoney stated that the Land Development Code has high standards. Reasonable interpretation must be made. One of the times for this is with redevelopment. This site is an eyesore. The County needs to promote the redevelopment and encourage commerce.

Commissioner Mahoney made a motion to recommend approval subject to inclusion of a waiver of the parking requirement to 2 spaces per booth, with hours of operation until 9:00 P.M., along with the other staff recommendations.

Commissioner Peltz seconded the motion.

Commissioner Harris stated that the Code is designed for open parcels, not redeveloped. Restrictions are good for new development. As infill progresses, we must change to encourage investment. The 25% ratio must not be viewed as hard and fast. If it takes a change in the Code to encourage redevelopment, let us make the change. This will bring jobs and economic development.

The motion passed by a vote of 6 – 0.

AN ORDINANCE AMENDING, PURSUANT TO THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY, THE ZONING CLASSIFICATIONS ASSIGNED TO CERTAIN PROPERTY LOCATED IN SEMINOLE COUNTY; ASSIGNING CERTAIN PROPERTY CURRENTLY ASSIGNED THE C-2 (COMMERCIAL) ZONING CLASSIFICATION THE PCD (PLANNED COMMERCIAL DEVELOPMENT DISTRICT) ZONING CLASSIFICATION; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

Section 1. LEGISLATIVE FINDINGS.

(a) The Board of County Commissioners hereby adopts and incorporates into this Ordinance as legislative findings the contents of the documents titled "Executive Summary Orange Mall Rezone."

(b) The Board hereby determines that the economic impact statement referred to by the Seminole County Home Rule Charter is unnecessary and waived as to this Ordinance.

Section 2. REZONINGS. The zoning classification assigned to the following described property is changed from C-2 (Commercial) to PCD (Planned Commercial Development District):

SEE ATTACHED EXHIBIT A

Section 3. CODIFICATION. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall not be codified.

Section 4. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. EFFECTIVE DATE. A certified copy of this Ordinance shall be provided to the Florida Department of State by the Clerk of the Board of County Commissioners in accordance with Section 125.66, Florida Statutes, and this Ordinance shall be effective upon the date of said filing and the recording date of the Development Order # 03-20500009 in the Official Land Records of Seminole County.

ENACTED this 9th day of December 2003

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
Daryl G. McLain, Chairman

EXHIBIT A LEGAL DESCRIPTION

C-2 to PCD (Z2003-040)

Parcel 1 – AKA Parcel 22 & 4G

From the Southwest Corner of Section 17, Township 21 South, Range 30 East, Seminole County, Florida, run along the westerly line of said Section 17, N 01 degrees 29'26"W, 596.50 feet to a point of beginning on the easterly right-of-way line of State Road 15 & 600; run thence along said right-of-way line N 38 degrees 12'34" E, 232.80 feet; run thence N 40 degrees 31'34" E, 150.29 feet; run thence N 43 degrees 29'54" E, 187.63 feet; thence leaving the aforementioned right-of-way run S 48 degrees 50'29" E, 200 feet; run thence N 43 degrees 29'54" E, 200 feet; run thence S 48 degrees 50'29" E, 170.25 feet; run thence N 41 degrees 09'31" E, 100 feet; run thence S 48 degrees 50'29" E, 250 feet; run thence N 41 degrees 09'31" E, 200 feet to a point on the southerly right-of-way line of Fernwood Boulevard; run thence along said right-of-way line S 48 degrees 50'29" E, 60 feet; run thence leaving aforementioned right-of-way S 41 degrees 09'31" W, 1272.12 feet; run thence N 48 degrees 50'29" W, 168.16 feet; run thence N 41 degrees 09'31" E, 236.12 feet; run thence N 48 degrees 50'29" W, 162.33 feet; run thence S 41 degrees 09'31" W, 34.07 feet; run thence N 48 degrees 50'29" W, 351.95 feet to the point of beginning being part in Lot 4, Fernwood Plaza as recorded in Plat Book 13, Page 95, Public Records of Seminole County.

SEMINOLE COUNTY DEVELOPMENT ORDER

On _____, Seminole County issued this Development Order relating to and touching and concerning the following described property:

Parcel 1 – AKA Parcel 22 & 4G

From the Southwest Corner of Section 17, Township 21 South, Range 30 East, Seminole County, Florida, run along the westerly line of said Section 17, N 01 degrees 29'26"W, 596.50 feet to a point of beginning on the easterly right-of-way line of State Road 15 & 600; run thence along said right-of-way line N 38 degrees 12'34" E, 232.80 feet; run thence N 40 degrees 31'34" E, 150.29 feet; run thence N 43 degrees 29'54" E, 187.63 feet; thence leaving the aforementioned right-of-way run S 48 degrees 50'29" E, 200 feet; run thence N 43 degrees 29'54" E, 200 feet; run thence S 48 degrees 50'29" E, 170.25 feet; run thence N 41 degrees 09'31" E, 100 feet; run thence S 48 degrees 50'29" E, 250 feet; run thence N 41 degrees 09'31" E, 200 feet to a point on the southerly right-of-way line of Fernwood Boulevard; run thence along said right-of-way line S 48 degrees 50'29" E, 60 feet; run thence leaving aforementioned right-of-way S 41 degrees 09'31" W, 1272.12 feet; run thence N 48 degrees 50'29" W, 168.16 feet; run thence N 41 degrees 09'31" E, 236.12 feet; run thence N 48 degrees 50'29" W, 162.33 feet; run thence S 41 degrees 09'31" W, 34.07 feet; run thence N 48 degrees 50'29" W, 351.95 feet to the point of beginning being part in Lot 4, Fernwood Plaza as recorded in Plat Book 13, Page 95, Public Records of Seminole County.

(The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property.)

FINDINGS OF FACT

Property Owner: Robert L. Hart
C/O R D Management Corporation
810 7th Ave., 28th Floor
New York, NY 10019

Project Name: ORANGE MALL REZONE

Requested Development Approval: Rezone from C-2 (Commercial) to PCD (Planned Commercial Development District).

The Development Approval sought is consistent with the Seminole County Comprehensive Plan and will be developed consistent with and in compliance to applicable land development regulations and all other applicable regulations and ordinances.

The owner of the property has expressly agreed to be bound by and subject to the development conditions and commitments stated below and has covenanted and agreed to have such conditions and commitments run with, follow and perpetually burden the aforescribed property.

Prepared by: TONY WALTER
1101 East First Street
Sanford, Florida 32771

ORDER**NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:**

(1) The aforementioned application for development approval is **GRANTED**.

(2) All development shall fully comply with all of the codes and ordinances in effect in Seminole County at the time of issuance of permits including all impact fee ordinances.

(3) The conditions upon this development approval and the commitments made as to this development approval, all of which have been accepted by and agreed to by the owner of the property are as follows:

1. That at least seventy five percent (75%) of the booths be limited to tenant leases of one (1) year or longer. That the balance of the booths be limited to seasonal leases. That weekend rentals be prohibited.
2. That the vendors will sell only bona fide antiques and/or new merchandise.
3. That all parking spaces will be 10 X 20 feet or meet the handicap accessible standards at final master plan.
4. That the total numbers of booths not exceed that number supported by parking facilities at a ratio of 2.0 parking spaces per booth or 1 parking space per 250 square feet of general retail as designated on the final master plan.
5. That the applicant demonstrate that the cross parking agreement with the credit union can be terminated or that these spaces are accounted for at final master plan.
6. That paint shops, auto care, pawn shops, tattoo and body piercing establishments and gaming establishments not be permitted.
7. Provide an internal pedestrian sidewalk system connecting the front entrance of the building to US 17-92 and Fernwood Boulevard.
8. Provide a minimum of twenty five percent (25%) open space.
9. That the parking lot lighting not exceed a height of sixteen (16) feet.
10. That the building exterior and color be consistent with the building elevation presented at the December 9, 2003 Board of County Commissioners meeting.
11. That a one hundred foot (100') curb and gutter be constructed in front of both bus stops and shelters on Fernwood Boulevard and a curb be installed along the east boundary abutting the fast food restaurant.
12. If warranted at final site plan, that a left turn lane into the site be constructed on Fernwood Boulevard.
13. That the operating hours will be from 9:00 AM to 9:00 PM.
14. That all uses permitted in the C-2 zoning district, except those listed in item 6 above, as well as indoor flea markets are permitted.
15. That security be provided in the parking lot and inside the building during operating hours.
16. That the fenced garden area be used for plant sales only.

(4) This Development Order touches and concerns the aforescribed property and the conditions, commitments and provisions of this Development Order shall perpetually burden, run with and follow the said property and be a servitude upon and binding upon said property unless released in whole or part by action of Seminole County by virtue of a document of equal dignity herewith. The owner of the said property has expressly covenanted and agreed to this provision and all other terms and provisions of this Development Order.

(5) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire order shall be null and void.

Done and Ordered on the date first above.

By: _____
Daryl McLain, Chairman
Seminole County Board
Of County Commissioners

Order**OWNER'S CONSENT AND COVENANT**

COMES NOW, Robert L. Hart, the owner of the aforescribed property in this Development Order, on behalf of himself and his heirs, successors, assigns or transferees of any nature whatsoever and consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Order.

Witness

OWNER:

Print Name

Robert L. Hart

Witness

Print Name

STATE OF FLORIDA)

COUNTY OF SEMINOLE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Robert L. Hart, who is personally known to me or who has produced _____ as identification and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20__.

Notary Public, in and for the County and State
Aforementioned

My Commission Expires: